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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IVEY EASTWOOD,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, aka AMERICAN
FAMILY INSURANCE GROUP,

Defendant.

Civil No. CV-05-1579-HA

**REPLY TO PLAINTIFF'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
RELEVANT TESTIMONY AND
DOCUMENTS**

In its Supplemental Memorandum, plaintiff conveniently fails to cite to the entire response to Interrogatory No. 1 that plaintiff now contends provides her with the right to depose Mr. Slack and Mr. Ness. The full interrogatory and response are as follows:

INTERROGATORY NO. 1: Please set forth the names of all individuals at defendant American Family who are responsible for deciding whether or not to offer more than \$100,000 to settle Mr. Vivero's claim against Ivey Eastwood after Mr. Vivero's refusal to accept policy limits.

RESPONSE: Brian Hunt and Richard Brown were responsible for making any recommendations regarding whether or not to offer more than the policy limits, but the ultimate responsibility for determining whether to do so rested with Ken Slack and Bob Ness at the Home Office of American Family. As explained in Richard Brown's and Brian Hunt's deposition, once attorney Robinowitz made it clear that he would not, under any circumstances, accept American Family's policy limits to fully settle the case, pursuant to company procedure, Richard Brown and Brian Hunt were responsible for identifying and reporting any claimed extra contractual exposure. Brian Hunt completed a report identifying a claimed extra contractual exposure. That report was forwarded to Ken Slack and Bob Ness.

Consistent with defendant's position all along, as stated above, Brian Hunt and Richard Brown were responsible for making recommendations as to whether or not to offer more than policy limits. Defendant never denied that Mr.'s Slack and Ness were provided with a report identifying the claimed extra-contractual exposure based on attorney Rabinowitz's refusal to accept American Family's policy limits to settle the case. The Declarations of both Ken Slack and Bob Ness make clear, however, that pursuant to company policy, neither got involved in the underlying lawsuit. (*See* Slack and Ness Declarations attached to Defendant's Opposition to Plaintiff's Motion to Compel.)

Simply stated, although Ken Slack and Bob Ness received notice of the underlying claim for extra-contractual exposure, they were not involved in, nor did they make any decisions based on the recommendations that were provided by Richard Brown and Brian Hunt concerning the underlying case, and there is no evidence to the contrary. Regardless, the evaluative communications from Brian Hunt and Richard Brown are

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privileged, as previously ordered by the court, and plaintiff offers no evidence or argument to defeat the privilege. Plaintiff's Motion to Compel should be denied accordingly.

DATED: February 22, 2007.

BULLIVANT HOUSER BAILEY PC

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